

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

IN RE: FTX CRYPTOCURRENCY
EXCHANGE COLLAPSE LITIGATION

No: 1:23-md-03076-KMM

MDL No. 3076

This Document Relates To:

GARRISON V. BANKMAN-FRIED
No. 22-cv-23753-MOORE/BECERRA

**PRELIMINARY REPORT BY DEFENDANTS THOMAS BRADY, GISELE
BÜNDCHEN, STEPHEN CURRY, LAWRENCE GENE DAVID, GOLDEN STATE
WARRIORS, LLC, UDONIS HASLEM, WILLIAM TREVOR LAWRENCE, SHOHEI
OHTANI, KEVIN O'LEARY, SHAQUILLE O'NEAL, DAVID ORTIZ, NAOMI OSAKA,
AND SOLOMID CORPORATION**

The filing parties (collectively, the “Sports and Entertainer Defendants”) are eight current or former professional athletes, a professional basketball team, a model, a television personality, an e-sports organization, and a comedian, all of whom allegedly participated in or displayed advertisements promoting FTX. Plaintiffs seek to hold the Sports and Entertainer Defendants liable for losses they allegedly suffered from transactions on the FTX platform. Each filing party is a defendant in only one active matter referred to in this MDL, namely, *Garrison v. Bankman-Fried*.¹

Background. FTX, a now-defunct cryptocurrency platform, collapsed in November 2022 after it failed to meet cash demands and was publicly accused of illegally transferring billions of dollars in customer funds to an affiliated entity, Alameda Research LLC. On November 11, 2022, FTX entered bankruptcy proceedings. Its former CEO, Sam Bankman-Fried, has been charged with multiple federal crimes, and several officers, including former CEO of Alameda Carolyn Ellison, former chief technology officer Gary Wang, and former engineering director Nishad Singh, have pleaded guilty to federal fraud charges. Prior to its collapse, FTX was lauded as “the leading digital assets exchange.”² Unbeknownst to the hundreds of individuals and companies that interacted with FTX during its three+ years of operation³—including members of Congress, non-

¹ Three defendants are also named in *Norris v. Brady*, 23-md-03076 (S.D. Fla.), which is stayed pending resolution of *Garrison*.

² <https://www.samsungnext.com/blog/why-we-invested-in-ftx>.

³ FTX operated primarily from the Bahamas, with its U.S. headquarters in Chicago. While FTX may have planned to relocate its U.S. headquarters to Miami in late October 2022, that never occurred. See <https://www.miaminewtimes.com/news/ftxs-miami-leases-axed-in-bankruptcy-court-deal-16098680>. Plaintiffs emphasize FTX’s purported Florida contacts, but identify only a single employee of a related company who actually worked from Florida.

profits, and the Sports and Entertainer Defendants here—FTX executives concealed their secret fraud from both other FTX individuals and outsiders alike.

Plaintiffs initiated this action on November 15, 2022.⁴ Plaintiffs allege that, in 2021 and 2022, the Sports and Entertainer Defendants engaged in advertising or promotion efforts on behalf of the FTX brand and platform, pursuant to individual agreements between FTX and each individual Sports and Entertainer Defendant. Plaintiffs further allege that the Sports and Entertainer Defendants’ various “advertising” efforts make them responsible, under assorted state law theories, including state securities laws, state unfair competition laws, aiding and abetting, and civil conspiracy, for losses plaintiffs suffered through investing in various products offered by FTX. *See generally Garrison* ECF 205 (SAC) ¶¶ 233-776.⁵

Plaintiffs have amended their complaint twice—first on December 16, 2022, and then on May 15, 2023, in response to the Sports and Entertainer Defendants’ initial motions to dismiss, filed on April 14, 2023. The MDL entered its transfer order on June 5, 2023. ECF 1. Two days later, the Court stayed the *Garrison* proceeding, *Garrison* ECF 226, as well as the briefing schedule for the Sports and Entertainer Defendants’ motions to dismiss, ECF 10. On June 15, 2023, the Court sua sponte consolidated for pretrial purposes *Garrison* and five actions transferred from the

⁴ Plaintiffs filed a series of state law cases, which they dismissed in favor of *Norris*, which was then removed to federal court and stayed. *Norris* ECF 48. Plaintiffs also filed two additional federal cases—*Kavuri v. Bankman-Fried*, No. 22-cv-23817 (S.D. Fla.), and *Podalsky v. Bankman-Fried*, No. 22-cv-23983 (S.D. Fla.)—which were consolidated with *Garrison sua sponte* by the Court.

⁵ “ECF” citations are to the docket in this proceeding. References to other proceedings include the initial plaintiff’s name and the ECF number, *e.g.*, “*Garrison* ECF 205.”

Northern District of California. ECF 1, 16.⁶

Proposed Tracking and Key Legal Issues. The Sports and Entertainer Defendants respectfully suggest that there are unique aspects to the claims against them not present in the other transferred matters, including the *Lam* Cases—with the possible exception of *Garrison v. Paffrath*, 23-cv-21023 (S.D. Fla.)⁷—and that the claims against the Sports and Entertainer Defendants should proceed in a separate pleading and a separate track from the claims against FTX employees, financial institutions, accountants, and advisors.

In particular, unlike the FTX employees, financial institutions, accountants, or financial advisors involved in the other transferred cases, the Sports and Entertainer Defendants are alleged to be liable not because of specific actions each allegedly took to further FTX’s fraud, but rather because each allegedly entered into an ordinary agreement with FTX and promoted the FTX brand pursuant to that agreement. *See generally Garrison* SAC ¶¶ 233-776. Plaintiffs allege that promoting the FTX brand is equivalent to “selling securities” under three states’ securities laws (Florida, California, and Oklahoma), and that it also creates liability under those states’ unfair

⁶ These cases are *Lam v. Bankman-Fried, et al.*, No. 3:22-07336 (N.D. Cal.), *Pierce v. Bankman-Fried, et al.*, No. 3:22-07444 (N.D. Cal.), *Hawkins v. Bankman-Fried, et al.*, No. 3:22-07620 (N.D. Cal.), *Jessup v. Bankman-Fried, et al.*, No. 3:22-07666 (N.D. Cal.), and *Papadakis v. Bankman-Fried, et al.*, No. 3:23-00024 (N.D. Cal.) (collectively, the “*Lam* Cases”).

⁷ The *Paffrath* complaint alleges similar legal theories, under Florida law only, to the *Garrison v. Bankman-Fried* complaint, but is pleaded against online “influencers”: individuals alleged to have promoted FTX and FTX products via YouTube and other social media platforms. The conduct pleaded as to these defendants is different from that pleaded with respect to the Sports and Entertainer Defendants, but there may be common questions of law with respect to the two cases.

competition laws, as well as under aiding and abetting fraud, aiding and abetting conversion, and civil conspiracy theories. *See generally id.* ¶¶ 672-776. Despite the fact that plaintiffs do not allege any Sports and Entertainer Defendant ever mentioned the Yield Bearing Accounts (“YBAs”) or the FTX Token (“FTT”) allegedly offered by FTX and purchased by some plaintiffs, *id.* ¶¶ 233-654, plaintiffs also seek a declaration that YBAs, FTT, and the FTX exchange (*i.e.*, the company itself) were securities required to be registered with federal and state authorities. *Id.* ¶¶ 708-15.

The primary legal issues with respect to the claims against the Sports and Entertainer Defendants are whether, and in what circumstances, these legal theories can be applied to individuals and entities who entered into agreements with a company that was later revealed to be engaging in fraud behind closed doors. These issues are different from, and unrelated to, questions of law and fact in the other actions. While the Sports and Entertainer Defendants anticipate that—should plaintiffs’ claims proceed beyond the motion to dismiss stage—some discovery will be needed from FTX (in bankruptcy) and former FTX employees, discovery needed from FTX advisors, financial firms, and accountants is likely to be minimal at most. Claims against the Sports and Entertainer Defendants should thus proceed separately, with coordination with respect to FTX and FTX employee discovery only.⁸

Proposed Schedule and Pending Motions. The Sports and Entertainer Defendants intend to file renewed motions to dismiss and propose that, to the extent the Court authorizes plaintiffs to file a consolidated complaint or set of complaints, it set a date by which such complaint(s) must be filed and a schedule for briefing the motions to dismiss consistent with the briefing schedule originally entered in *Garrison*. *See Garrison* ECF 207.

At the time the *Garrison* case was transferred into the MDL, the Sports and Entertainer

⁸ Certain Sports and Entertainer Defendants also assert there is a lack of personal jurisdiction.

Defendants had a pending motion to stay discovery, which plaintiffs had not opposed with respect to merits discovery. ECF 162, 197. Despite not opposing, plaintiffs subsequently served merits discovery on each Sports and Entertainer Defendant and noticed twelve depositions over a 14-day period in July. ECF 213. The Sports and Entertainer Defendants timely objected to these notices.

The Sports and Entertainer Defendants continue to submit that it would be appropriate for discovery to begin with respect to the claims against them only after their motions to dismiss have been heard and decided. Plaintiffs' claims against the Sports and Entertainer Defendants are highly novel and—the Sports and Entertainer Defendants believe—legally deficient for many reasons, including, *inter alia*, (1) no Sports and Entertainer Defendant ever sold or offered to sell any specific FTX product, a requirement for the securities claims; (2) plaintiffs cannot trace their alleged injury to Sports and Entertainer Defendants' conduct, a requirement for all their claims; and (3) plaintiffs have not (and cannot) plead their claims with the particularity required by Rule 9(b) or even by Rule 8. In addition, the claims cannot proceed in the absence of FTX, a necessary party under Rule 19. Plaintiffs' claims should be tested, and their viability determined, prior to discovery. *See, e.g., Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1368 (11th Cir. 1997). Efficiency is also promoted by briefly delaying discovery because necessary discovery is unlikely to be available from FTX or the former FTX employees until after Sam Bankman-Fried's criminal trial, which is set to take place in October 2023.⁹

The Sports and Entertainer Defendants anticipate that, once discovery begins, the case as to them can proceed on a schedule similar to that outlined in the Sports and Entertainer Defendants' prior proposed case schedule, *Garrison* ECF 192.

⁹ *United States v. Bankman-Fried*, 22-cr-00673 (S.D.N.Y.) (1/03/2023 Minute Order).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 18, 2023, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court, by using the CM/ECF system, causing a true and correct copy to be served on all counsel of record.

By: /s/ Roberto Martinez
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